

109TH CONGRESS
2D SESSION

H. R. 5553

To amend section 115 of title 17, United States Code, to provide for licensing of digital delivery of musical works, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 8, 2006

Mr. SMITH of Texas (for himself and Mr. BERMAN) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend section 115 of title 17, United States Code, to provide for licensing of digital delivery of musical works, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Section 115 Reform
5 Act of 2006”.

6 **SEC. 2. STATUTORY LICENSES FOR DIGITAL DELIVERY OF**
7 **MUSICAL WORKS.**

8 Section 115 of title 17, United States Code, is
9 amended by adding at the end the following new sub-
10 section:

1 “(e) LICENSES FOR DIGITAL USES OF MUSICAL
2 WORKS.—

3 “(1) IN GENERAL.—The compulsory license for
4 digital phonorecord deliveries and hybrid offerings
5 shall be governed by this subsection, in addition to
6 subsections (a), (c), and (d). The license under this
7 subsection covers—

8 “(A) the making and distribution of gen-
9 eral and incidental digital phonorecord deliv-
10 eries in the form of full downloads, limited
11 downloads, interactive streams, and any other
12 form constituting a digital phonorecord delivery
13 or hybrid offering; and

14 “(B) all reproduction and distribution
15 rights necessary to engage in activities de-
16 scribed in subparagraph (A), solely for the pur-
17 pose of engaging in such activities under the li-
18 cense, including—

19 “(i) the making of reproductions by
20 and for end users;

21 “(ii) reproductions made on servers
22 under the authority of the licensee; and

23 “(iii) incidental reproductions made
24 under the authority of the license in the
25 normal course of engaging in activities de-

1 scribed in subparagraph (A), including
2 cached, network, and RAM buffer repro-
3 ductions.

4 “(2) BLANKET LICENSES.—A person may ob-
5 tain a compulsory license to engage in activities sub-
6 ject to this subsection only from a designated agent
7 under paragraph (4) and only if the person is a dig-
8 ital music provider. A person may engage in activi-
9 ties subject to this subsection under authority of a
10 compulsory license only—

11 “(A) if the license was obtained by a dig-
12 ital music provider; and

13 “(B) with respect to end users with which
14 the digital music provider meets the require-
15 ments of paragraph (14)(C).

16 “(3) ROYALTY-FREE LICENSE.—

17 “(A) IN GENERAL.—A compulsory license
18 shall be available for the making of server and
19 incidental reproductions to facilitate noninter-
20 active streaming.

21 “(B) ACTIVITIES COVERED.—Each des-
22 ignated agent shall grant a license under this
23 subsection for the making of server and inci-
24 dental reproductions to facilitate noninteractive
25 streaming at a royalty-free rate. The designated

1 agent may charge only a filing fee of not more
2 than \$30 to administer the issuance of the li-
3 cense. The license shall cover reproductions
4 made on servers under authority of the licensee
5 and incidental reproductions made under the
6 authority of the licensee in the course of the
7 noninteractive streaming, including cached, net-
8 work, and RAM buffer reproductions, to the ex-
9 tent reasonably necessary for, and solely for the
10 purpose of, engaging in noninteractive stream-
11 ing under the license in a technologically rea-
12 sonable and efficient matter.

13 “(C) EXCLUDED ACTIVITIES.—The license
14 under subparagraph (A) does not extend to any
15 server or incidental reproductions used to en-
16 able a streaming service (or any other type of
17 service) that takes affirmative steps to author-
18 ize, enable, cause, or induce the making of re-
19 productions of musical works by or for end
20 users that are accessible by those end users for
21 future listening, unless a valid license for repro-
22 duction and distribution rights has otherwise
23 been obtained by the streaming or other type of
24 service permitting the server or incidental re-
25 productions to be used for that activity.

1 “(4) APPLICATIONS FOR LICENSES.—Any dig-
2 ital music provider seeking a license under this sub-
3 section may apply to a designated agent for the li-
4 cense, identifying in the application each type of
5 qualifying activity for which the license is sought.
6 Any digital music provider that has a license under
7 this subsection and seeks to engage in any activity
8 covered by this subsection that is not identified in
9 the license may engage in that activity only upon fil-
10 ing a new application identifying the additional ac-
11 tivity.

12 “(5) LICENSES.—All activities specified in an
13 application filed under paragraph (4) for which a li-
14 cense is available under this subsection shall be li-
15 censed by the designated agent. The license shall be
16 effective, upon the filing of the application, for all
17 copyrighted nondramatic musical works (or shares of
18 such musical works) represented by the designated
19 agent.

20 “(6) RETROACTIVE ROYALTY PAYMENTS.—

21 “(A) RETROACTIVE PAYMENTS.—A digital
22 music provider that has obtained a license from
23 a designated agent under this subsection for—

24 “(i) the making and distribution of
25 limited downloads, or

1 “(ii) the making or distribution of
2 interactive streams,
3 may report to the designated agent activity au-
4 thorized by the license that the digital music
5 provider engaged in during the period beginning
6 January 1, 2001, and ending on January 1,
7 2008, and pay to the designated agent royalties
8 applicable to that activity. Such reporting and
9 payments shall be made not later than March
10 1, 2008, in accordance with the regulations
11 issued under paragraph (10) regarding report-
12 ing and payments.

13 “(B) LIMITATION ON LIABILITY.—A dig-
14 ital music provider that reports activity and
15 makes payments under this paragraph for an
16 activity under this paragraph shall not be sub-
17 ject to an action for copyright infringement al-
18 leging violation of reproduction or distribution
19 rights to the extent such action is based on ac-
20 tivity so reported for which all payments due
21 have been made.

22 “(C) EFFECT ON ROYALTY-FREE LI-
23 CENSE.—A digital music provider that complies
24 with the requirements of this paragraph is enti-
25 tled to a royalty-free license under paragraph

1 (3)(A) for the activity reported under subpara-
2 graph (A), retroactive to January 1, 2001.

3 “(7) LICENSE NOT TRANSFERABLE.—A license
4 granted to a digital music provider under this sub-
5 section may not be transferred to any other person
6 or entity.

7 “(8) ROYALTY RATES AND TERMS.—

8 “(A) IN GENERAL.—Except as provided in
9 this paragraph, the Copyright Royalty Judges
10 shall determine reasonable rates and terms for
11 digital phonorecord deliveries and hybrid offer-
12 ings as provided under subsection (c) and chap-
13 ter 8, except for server and incidental reproduc-
14 tions for noninteractive streaming that are eligi-
15 ble for royalty-free licenses under this sub-
16 section.

17 “(B) RATES AND TERMS IN EFFECT.—
18 Rates and terms in effect under subsection (c)
19 on the effective date of the Section 115 Reform
20 Act of 2006 for any activity for which a license
21 is available under this section shall continue to
22 apply to that activity on and after that date
23 until a new rate is determined under subsection
24 (c) and chapter 8.

1 “(C) PAYMENT.—Licensees under this
2 subsection shall make payments of royalty rates
3 and terms to the designated agents as directed
4 by the Copyright Royalty Judges.

5 “(D) RATES AND TERMS FOR NEW LI-
6 CENSE ACTIVITIES.—

7 “(i) IN GENERAL.—Not later than
8 December 1, 2007, the Copyright Royalty
9 Judges shall initiate a ratemaking pro-
10 ceeding, pursuant to the procedures set
11 forth in chapter 8, to determine a final
12 rate and terms for any activity for which
13 a license is available under this subsection
14 if—

15 “(I) a final rate and terms have
16 not been established for the activity as
17 of that date; or

18 “(II) the activity is not the sub-
19 ject of a proceeding to set a final rate
20 and terms under subsection (c) that is
21 pending before the Copyright Royalty
22 Judges on that date.

23 “(ii) PENDING PROCEEDINGS.—In
24 any case in which a proceeding is pending
25 before the Copyright Royalty Judges, on

1 December 1, 2007, to determine final rates
2 and terms under subsection (c) for any ac-
3 tivity for which a license is available under
4 this subsection, the Copyright Royalty
5 Judges may expand and adjust the sched-
6 ule of the proceeding to cover rates and
7 terms for any activity described in clause
8 (i), in lieu of initiating a proceeding under
9 clause (i) with respect to that activity, if so
10 expanding and adjusting the schedule of
11 the proceeding will not unduly prejudice
12 any party to the proceeding and will not
13 delay the final determination of rates and
14 terms by the Copyright Royalty Judges by
15 more than 90 days.

16 “(iii) PARTICIPATION OF DESIGNATED
17 AGENTS.—All designated agents, and any
18 other parties who have a significant inter-
19 est, within the meaning of section 804(a),
20 in the applicable royalty rate, are entitled
21 to participate in a proceeding under this
22 subparagraph relating to activities licensed
23 under this subsection.

24 “(E) INTERIM RATES.—

1 “(i) IN GENERAL.—For any activity
2 for which a license is available under this
3 subsection and for which a rate and terms
4 have not been determined under subsection
5 (c), a digital music provider shall, upon fil-
6 ing a valid application with the relevant
7 designated agent, have a license under this
8 subsection to engage in the activity, sub-
9 ject to clause (ii).

10 “(ii) INTERIM RATES AND TERMS.—
11 Upon the filing of an application under
12 clause (i)—

13 “(I) the digital music provider
14 and the designated agent may nego-
15 tiate an interim rate and terms that
16 will apply to the activity under the li-
17 cense; or

18 “(II) the digital music provider
19 or the designated agent, or both, may
20 apply to the Copyright Royalty
21 Judges for an interim rate and terms,
22 in which case—

23 “(aa) the Copyright Royalty
24 Judges shall, not later than 15
25 days after the application is

1 made, publish notice of an expedited proceeding to determine the
2 interim rate and terms; and

3 “(bb) the Judges shall determine the interim rate and
4 terms not less than 30 days and
5 not more than 60 days after publishing the notice, through the
6 expedited proceeding.

7 “(iii) APPLICABILITY OF INTERIM
8 RATES AND TERMS.—(I) An interim rate
9 and terms negotiated under clause (ii)(I)
10 or established under clause (ii)(II) shall
11 apply to the activity under the license concerned until a final rate and terms for the
12 activity are determined under subparagraph (D), or as otherwise agreed by the
13 parties.

14 “(II) An interim rate and terms described in clause (i) with respect to an activity by a digital music provider shall not
15 be treated as precedent in a final rate-making proceeding. If the Copyright Royalty Judges have established an interim
16 rate and terms under clause (ii)(II), sub-

1 ject to clause (iv), that rate and those
2 terms shall apply to the same activity en-
3 gaged in by any digital music provider, ex-
4 cept as otherwise agreed to by the parties.

5 “(iv) SINGLE PROCEEDING FOR EACH
6 ACTIVITY.—Unless the Copyright Royalty
7 Judges determine that there is good cause
8 to review an interim rate established under
9 clause (ii)(II), the Judges may conduct
10 only 1 proceeding to determine an interim
11 rate and terms for an activity for which a
12 license is available under this subsection.

13 “(v) ADJUSTMENT OF INTERIM
14 RATES.—After a determination of a final
15 rate and terms that will apply to an activ-
16 ity for which a license is available under
17 this subsection has been made under sub-
18 paragraph (D), the final rate and terms
19 shall be retroactive to the inception of the
20 activity under all licenses to which such
21 rate and terms apply, unless an agreement
22 between the parties to a license provides
23 otherwise. Not later than 60 days after the
24 determination of the final rate becomes ef-
25 fective—

1 “(I) the digital music provider
2 shall pay to the designated agent any
3 amounts due from underpayment of
4 fees by the digital music provider be-
5 cause the final rate exceeds the in-
6 terim rate; or

7 “(II) the designated agent shall
8 refund to the digital music provider
9 the amounts of any overpayment of
10 fees by the digital music provider be-
11 cause the interim rate exceed the final
12 rate, or, at the election of the digital
13 music provider, the designated agent
14 shall credit such overpayment against
15 future payments by the digital music
16 provider to the designated agent
17 under this subsection.

18 “(9) DESIGNATED AGENTS.—

19 “(A) IN GENERAL.—Designated agents
20 under this subsection are the General Des-
21 ignated Agent and additional designated agents.

22 “(B) GENERAL DESIGNATED AGENT.—

23 “(i) DESIGNATION AND PURPOSE.—

24 (I) Not later than August 1, 2007, the
25 Register of Copyrights shall designate a

1 mechanical licensing and collection agency
2 representing music publishing entities that
3 represent the greatest share of the music
4 publishing market, as measured by the
5 amount of royalties collected during the
6 preceding 3 full calendar years with re-
7 spect to the use of copyrighted musical
8 works pursuant to this section, to establish
9 and operate the General Designated Agent.

10 “(II) The General Designated Agent
11 shall grant and administer licenses and col-
12 lect and distribute royalties payable for the
13 use of musical works licensed under this
14 subsection.

15 “(III) The General Designated Agent
16 shall be governed by a board of directors
17 consisting of representatives of at least 5
18 music publishing entities.

19 “(ii) DECERTIFICATION.—The Reg-
20 ister of Copyrights may disqualify the Gen-
21 eral Designated Agent upon a showing
22 that it fails to meet the qualifications
23 under this subparagraph or otherwise fails
24 to meet the requirements under this para-
25 graph. In such a case, the Register of

1 Copyrights shall designate another General
2 Designated Agent that most closely meets
3 the requirements of clause (i)(I).

4 “(C) ADDITIONAL DESIGNATED AGENTS.—

5 “(i) CERTIFICATION.—The Register of
6 Copyrights shall certify as an additional
7 designated agent to represent copyright
8 owners for purposes of licenses under this
9 subsection any entity that demonstrates
10 that—

11 “(I) upon certification, it will
12 represent music publishing entities
13 that represent at least a 15 percent
14 share of the music publishing market,
15 as measured by the amount of royal-
16 ties collected during the preceding 3
17 full calendar years with respect to the
18 use of copyrighted musical works pur-
19 suant to this section; and

20 “(II) it has the capability to per-
21 form the required functions of a des-
22 ignated agent under this subsection.

23 “(ii) DUTIES.—(I) Upon certification
24 under clause (i), an additional designated
25 agent shall represent any copyright owners

1 of musical works who elect to have the ad-
2 ditional designated agent represent them
3 and the musical works (or shares of musi-
4 cal works) owned or controlled by such
5 copyright owners for purposes of the li-
6 censes under this subsection.

7 “(II) Each additional designated
8 agent shall notify the General Designated
9 Agent and any other additional designated
10 agent of each copyright owner, and the
11 musical works (or shares of musical works)
12 owned or controlled by the copyright
13 owner, that the additional designated agent
14 represents pursuant to subclause (I).

15 “(III) Any election under subclause
16 (I) is effective only if it is made in writing,
17 a copy of which shall be made available to
18 any other designated agent upon a reason-
19 able request therefor.

20 “(iii) DECERTIFICATION.—The Reg-
21 ister of Copyrights may remove the certifi-
22 cation of any additional designated agent
23 upon a showing that it fails to meet the
24 qualifications under this subparagraph or

1 otherwise fails to meet the requirements
2 under this paragraph.

3 “(D) AUTHORITIES OF DESIGNATED
4 AGENTS.—A designated agent may—

5 “(i) engage in activities pursuant to
6 this subsection;

7 “(ii) engage in such additional activi-
8 ties in the interest of music publishers and
9 songwriters as the designated agent con-
10 siderers appropriate, including industry ne-
11 gotiations, ratesetting proceedings, litiga-
12 tion, and legislative efforts; and

13 “(iii) apply any administrative fees or
14 other funds it collects to support the activi-
15 ties described in clauses (i) and (ii).

16 “(E) ELECTIONS BY COPYRIGHT OWN-
17 ERS.—

18 “(i) REPRESENTATION BY SINGLE
19 DESIGNATED AGENT.—Each copyright
20 owner, and the musical works (or shares of
21 musical works) that the copyright owner
22 owns or controls, may be represented by
23 only one designated agent during any cal-
24 endar year.

1 “(ii) ANNUAL ENROLLMENT PE-
2 RIOD.—

3 “(I) IN GENERAL.—Each copy-
4 right owner may, during the month of
5 September of each year, elect to
6 change the designated agent to rep-
7 resent the owner and the musical
8 works (or shares of musical works) re-
9 ferred to in clause (i), beginning on
10 January 1 of the succeeding calendar
11 year.

12 “(II) SELECTION.—A copyright
13 owner may choose only one designated
14 agent during the month of September
15 of each year. If the designated agent
16 chosen is not certified pursuant to
17 subparagraph (C)(i) or is decertified
18 pursuant to subparagraph (C)(iii), the
19 copyright owner and the musical
20 works (or shares) referred to in clause
21 (i) shall be represented by the General
22 Designated Agent for the succeeding
23 calendar year.

24 “(iii) EFFECT ON LICENSES.—A des-
25 ignated agent’s representation of the musi-

1 cal works (and shares of musical works) of
2 any copyright owner who elects to change
3 designated agents under clause (ii) shall
4 terminate on December 31 of the year in
5 which the election is made, after which the
6 musical works (and shares of musical
7 works) of the copyright owner will become
8 subject to the licenses in effect with the
9 designated agent selected under clause (ii).

10 “(iv) DEFAULT REPRESENTATION BY
11 GENERAL DESIGNATED AGENT.—If a copy-
12 right owner does not choose to be rep-
13 resented by an additional designated agent,
14 the General Designated Agent shall rep-
15 resent the copyright owner and musical
16 works (or shares of musical works) owned
17 or controlled by the copyright owner.

18 “(v) VOLUNTARY AGREEMENTS.—A
19 copyright owner and a digital music pro-
20 vider may enter into a voluntary license
21 agreement pursuant to subsection
22 (c)(3)(E)(i) to cover activities licensed
23 under this subsection. Any such agreement
24 shall apply in lieu of a blanket license
25 under this subsection with respect to those

1 musical works (or shares of musical works)
2 and activities covered by the agreement
3 during the period that the agreement is in
4 effect. The royalty fees due for usage of
5 musical works (or shares of musical works)
6 under a blanket license under this sub-
7 section shall be reduced in proportion to
8 the usage covered under such a voluntary
9 license agreement. Each designated agent
10 shall establish procedures by which copy-
11 right owners and licensees shall be re-
12 quired to notify the designated agent of
13 the existence of voluntary license agree-
14 ments upon which they are relying in lieu
15 of the blanket license. Such procedures
16 shall include appropriate measures to pro-
17 tect confidential information of licensees.

18 “(F) NOTICE OF DESIGNATED AGENTS.—

19 At least 90 days before beginning operations,
20 the General Designated Agent and any inter-
21 ested party wishing to serve as a designated
22 agent shall file with the Copyright Office a no-
23 tice of intent to operate as a designated agent
24 under this subsection. The notice shall contain
25 such contact information, and such information

1 concerning applications for licenses under this
2 subsection and access to the electronic database
3 of the designated agent (described in subpara-
4 graph (H)(i)) identifying musical works (or
5 shares of musical works) represented by the
6 designated agent, as required in regulations
7 issued to carry out this subsection. The Copy-
8 right Office shall make each notice filed under
9 this subparagraph available to the public on the
10 Internet.

11 “(G) TERMINATION OF DESIGNATED
12 AGENT.—

13 “(i) NOTICE AND TRANSFER OF
14 RECORDS.—At least 180 days before termi-
15 nating operations, a designated agent
16 shall—

17 “(I) notify the Copyright Office,
18 all of its licensees under this sub-
19 section, all of the copyright owners
20 represented by the designated agent
21 for the purposes of this subsection,
22 and all other designated agents of its
23 intent to terminate operations; and

24 “(II) transfer electronic and
25 other copies of all relevant records to

1 the existing General Designated Agent
2 or, in the case of the termination of
3 the General Designated Agent, to the
4 successor General Designated Agent.

5 “(ii) ASSUMPTION OF DUTIES BY
6 GDA.—Upon the termination of operations
7 of a designated agent, the General Des-
8 ignated Agent or successor General Des-
9 ignated Agent, as the case may be, shall
10 assume the administration of the musical
11 works and rights previously administered
12 by the terminated designated agent, re-
13 gardless of whether the terminated agent
14 has complied with clause (i).

15 “(H) MUSICAL WORKS DATA.—

16 “(i) AVAILABILITY.—The General
17 Designated Agent and each additional des-
18 ignated agent shall maintain and make
19 available to licensees, free of charge, a
20 searchable electronic database of informa-
21 tion from which licensees can determine
22 which musical works (or shares of musical
23 works) are available for licensing under
24 this subsection through that designated
25 agent. Any musical work (or shares of a

1 musical work) not identified as being rep-
2 resented by the General Designated Agent
3 or any additional designated agent in any
4 such database may be presumed by licens-
5 ees to be represented by the General Des-
6 ignated Agent.

7 “(ii) USE OF DATABASE BY DES-
8 IGNATED AGENTS AND LICENSEES.—Sub-
9 ject to the public access described under
10 clause (iii), the database required by clause
11 (i) may be used by designated agents and
12 licensees only for purposes of determining
13 the identity and availability of musical
14 works for licenses under this subsection,
15 obtaining such licenses, reporting of use of
16 musical works, payment of royalties, and
17 otherwise to comply with licenses under
18 this subsection, except that a designated
19 agent may use or make the database it
20 maintains available for other purposes re-
21 lating to musical works or music pub-
22 lishers. The Copyright Royalty Judges
23 shall, in establishing cost-sharing amounts
24 pursuant to paragraph (12), consider the
25 value and benefit of any such other pur-

1 poses to the designated agent and the
2 copyright owners it represents. The use of
3 any such database shall be subject to rea-
4 sonable confidentiality and security stand-
5 ards prescribed in regulations to carry out
6 this subsection.

7 “(iii) PUBLIC ACCESS TO DATA-
8 BASE.—The General Designated Agent
9 and each designated agent shall make rel-
10 evant portions of the database required by
11 clause (i) available free of charge to the
12 general public to access information con-
13 cerning specific musical works that are
14 represented by the designated agent, sub-
15 ject to reasonable terms and conditions of
16 use as may be prescribed by the Register
17 of Copyrights.

18 “(I) LETTERS OF DIRECTION.—

19 “(i) IN GENERAL.—A designated
20 agent shall comply with a letter of direc-
21 tion submitted under clause (ii) or (iii)
22 which instructs the designated agent to
23 pay all or part of the royalties otherwise
24 payable to the copyright owner to another
25 person.

1 “(ii) RECOUPMENT OF ADVANCE.—A
2 copyright owner that receives an advance
3 payment from a sound recording company
4 under a contract entered into before June
5 1, 2006, that has not been recouped by the
6 sound recording company shall, at the re-
7 quest of the sound recording company,
8 submit a letter of direction to a designated
9 agent instructing the designated agent to
10 pay royalties otherwise payable to the
11 copyright owner to the sound recording
12 company until such time as the advance
13 payment made by the sound recording
14 company to the copyright owner is re-
15 couped by the sound recording company.

16 “(iii) MISSING COPYRIGHT OWNER.—
17 In any case in which a sound recording
18 company is, after reasonable efforts, un-
19 able to locate a copyright owner that re-
20 ceived an advance payment from the sound
21 recording company that has not fully been
22 recouped by the sound recording company,
23 the sound recording company may submit
24 a letter of direction to a designated agent
25 directing the designated agent to pay roy-

alties that would be due the copyright owner to the sound recording company.

“(10) ROYALTY REPORTING AND COMPLIANCE.—

“(A) REQUIREMENTS.—

“(i) IN GENERAL.—Each licensee under this subsection shall, on a quarterly basis and in electronic format, report its usage of musical works under the license, and make royalty payments by reason of such usage, to the applicable designated agent.

“(ii) LIMITATION ON DISCLOSURE.—

“(I) IN GENERAL.—A designated agent may disclose information received under clause (i) to a recipient of royalty payments made by a licensee only with respect to musical works owned or controlled by the recipient. The designated agent may not disclose such information to any other person in a form that can be readily associated with a licensee except to the extent permitted by written agreement of the licensee.

1 “(II) EXCEPTION.—Subclause (I)
2 does not prevent a designated agent
3 from providing information with re-
4 spect to a licensee—

5 “(aa) to the legal and finan-
6 cial advisors of the designated
7 agent or to an accountant or
8 auditor rendering services relat-
9 ing to this subsection; or

10 “(bb) to the extent nec-
11 essary in connection with a bona
12 fide dispute or legal claim or pro-
13 ceeding.

14 “(iii) INTEREST.—

15 “(I) IN GENERAL.—A licensee
16 who has failed to make a payment re-
17 quired under this subsection by the
18 due date to a designated agent (in-
19 cluding as specified in a notice of pay-
20 ment deficiency or default, as deter-
21 mined in a royalty compliance exam-
22 ination under subparagraph (B), or as
23 required by a determination of the
24 Copyright Royalty Judges), shall pay
25 to the designated agent interest on

1 the overdue amount, at the Federal
2 funds rate plus 5 percent, such inter-
3 est to accrue monthly from the date
4 payment was due until the date pay-
5 ment is received by the designated
6 agent.

7 “(II) DEFINITION.—In this
8 clause, the term ‘Federal funds rate’
9 means the interest rate established by
10 the Federal Reserve at which deposi-
11 tory institutions lend balances at the
12 Federal Reserve to other depository
13 institutions overnight. The Federal
14 funds rate for any 1-month period
15 during which interest accrues under
16 clause (i) is the Federal funds rate in
17 effect on the first day of that 1-month
18 period.

19 “(iv) PROMOTIONAL USE.—A licensee
20 under this subsection shall not be required
21 to report or pay under this subsection for
22 a free promotional use of a musical work
23 that is authorized by the copyright owner
24 of the musical work.

1 “(B) ROYALTY COMPLIANCE EXAMINA-
2 TIONS.—A designated agent may, upon pro-
3 viding written notice to its licensee under this
4 subsection, conduct a royalty compliance exam-
5 ination of the licensee, subject to the following:

6 “(i) A designated agent may conduct
7 only 1 examination of any licensee in a cal-
8 endar year, and may conduct an examina-
9 tion of a licensee with respect to a report-
10 ing period only once. A designated agent
11 may conduct an examination jointly with
12 one or more other designated agents.

13 “(ii) The examination may begin only
14 within 18 months after the end of the pe-
15 riod being examined and may only cover a
16 period of not less than 2 and not more
17 than 4 consecutive years, except that an
18 examination may cover a period of—

19 “(I) more than 4 years if the ex-
20 amination includes activities subject
21 to retroactive payments under para-
22 graph (6);

23 “(II) a period of less than 2
24 years if—

1 “(aa) the licensee’s license
2 has been terminated;

3 “(bb) the licensee has de-
4 faulted in its reporting or pay-
5 ments under this paragraph; or

6 “(cc) the licensee has termi-
7 nated or is about to terminate
8 operations, has filed or indicated
9 an intent to file for bankruptcy,
10 or has transferred or indicated
11 an intent to transfer its assets to
12 a third party; or

13 “(III) a period of less than 2
14 years or more than 4 years, if for
15 other good cause the examination can-
16 not reasonably cover a period of 2 to
17 4 years.

18 “(iii) At the conclusion of the exam-
19 ination, the designated agent shall, after
20 considering any written rebuttal provided
21 by the licensee during the examination,
22 provide a written notice to the licensee set-
23 ting forth the designated agent’s final de-
24 termination of the claim, if any, resulting
25 from the examination.

1 “(iv) The designated agent shall bear
2 the costs of the examination, except that,
3 if the licensee underpaid royalty fees by 10
4 percent or more, the licensee shall bear the
5 reasonable costs of the examination.

6 “(v) A licensee may not assert section
7 507 of this title or any other Federal or
8 State statute of limitations, doctrine of
9 laches or estoppel, or similar provision to
10 avoid a royalty examination under this
11 subparagraph, or as a defense to a legal
12 action arising from such a royalty exam-
13 ination, if the legal action is commenced
14 within 18 months after the final deter-
15 mination by the designated agent of the
16 claim (as stated in the written notice under
17 clause (iii)) resulting from the examination
18 that is the basis for such action.

19 “(C) FAILURE TO REPORT OR PAY ROYAL-
20 TIES.—

21 “(i) IN GENERAL.—If a licensee under
22 this subsection—

23 “(I) fails to provide a quarterly
24 report when due or fails to provide a

1 quarterly report in compliance with
2 the error tolerance standard, or

3 “(II) fails to make all quarterly
4 royalty payments when due or fails to
5 pay royalties due for reported usage,
6 the designated agent may provide written
7 notice to the licensee describing the default
8 under subclause (I) or (II) and providing
9 that if the default is not remedied within
10 30 days after receipt of the notice, the li-
11 cense will automatically terminate upon the
12 expiration of that 30-day period. Upon
13 such termination, the licensee will be sub-
14 ject to an infringement action as provided
15 in subsection (c)(6) with respect to the
16 uses of the musical works that are the sub-
17 ject of the default.

18 “(ii) FAILURE WITH RESPECT TO IN-
19 DIVIDUAL WORK.—

20 “(I) EXCLUSION FROM LI-
21 CENSE.—If a licensee with an other-
22 wise valid license under this sub-
23 section—

24 “(aa) has not made the re-
25 quired reports or royalty pay-

1 ments under subparagraph (A)(i)
2 for a musical work covered by the
3 license, or

4 “(bb) upon being sent writ-
5 ten notice from the designated
6 agent of a valid reporting or pay-
7 ment deficiency with respect to
8 the use of a musical work, fails
9 to remedy that deficiency within
10 the specified cure period,

11 that work is excluded from the scope
12 of the license until such time as the li-
13 censee provides all the reports that
14 are past due, and makes all royalty
15 payments that are past due, to the
16 designated agent for that work, or the
17 designated agent otherwise identifies
18 the work, determines the usage of the
19 work, and has received from the li-
20 censee all royalty payments for the
21 work that are past due.

22 “(II) SPECIFIED CURE PE-
23 RIOD.—For purposes of subclause
24 (I)(bb), the “specified cure period”
25 means, with respect to a licensee—

1 “(aa) 90 days, during the
2 first 12 month-period in which
3 the licensee engages in activities
4 under a license under this sub-
5 section;

6 “(bb) 60 days, during the
7 succeeding 12-month period in
8 which a licensee engages in ac-
9 tivities under a license under this
10 subsection; and

11 “(cc) 30 days, during any
12 period thereafter.

13 “(III) EXCEPTION.—If the li-
14 censee demonstrates to the designated
15 agent with respect to a musical work
16 that is the subject of a notice of defi-
17 ciency described in subclause (I)(bb)
18 that the deficiency cannot be remedied
19 because it is due to missing informa-
20 tion that, notwithstanding a diligent
21 search by the licensee, is actually and
22 objectively unobtainable by the li-
23 censee from any known source, then
24 the license shall not be invalidated

1 with respect to that work, if all royal-
2 ties due for that work have been paid.

3 “(iii) OBTAINING SUBSEQUENT LI-
4 CENSES.—A licensee whose license is ter-
5 minated by a designated agent under
6 clause (i) and who fully remedies the de-
7 fault within 60 days after the date on
8 which the license terminates, may apply for
9 and obtain a new license from that des-
10 ignated agent, if, during the 5-year period
11 ending on the date of such termination, the
12 licensee has not previously had a license
13 terminated by the designated agent. In any
14 other case in which a license is validly ter-
15 minated by a designated agent, the des-
16 ignated agent may require the licensee to
17 meet reasonable credit or advance require-
18 ments or to demonstrate the capability to
19 report and make royalty payments in com-
20 pliance with this subsection before obtain-
21 ing a new license.

22 “(11) DISTRIBUTION OF ROYALTIES, UN-
23 CLAIMED FUNDS, AND DISPUTE RESOLUTION.—

24 “(A) DISTRIBUTION OF ROYALTIES.—Each
25 designated agent shall be responsible for dis-

1 tributing royalties collected from licensees
2 under this subsection to any copyright owner
3 whom the designated agent represents and who
4 has provided the designated agent with suffi-
5 cient information to identify and pay that copy-
6 right owner (or the copyright owner’s designee).

7 “(B) UNCLAIMED FUNDS.—

8 “(i) IN GENERAL.—If a designated
9 agent is unable, after a reasonably diligent
10 search, to identify or locate a copyright
11 owner entitled to receive royalties under
12 subparagraph (A), the designated agent
13 may deposit the undistributed royalties (in
14 this subparagraph referred to as ‘un-
15 claimed funds’) into an unclaimed funds
16 account that earns interest, accrued
17 monthly, at the Federal short term rate
18 determined under section 1274(d)(1)(C)(i)
19 of the Internal Revenue Code of 1986. In-
20 terest accrued on unclaimed funds shall be
21 payable to a copyright owner upon dis-
22 tribution of the unclaimed funds to such
23 copyright owner.

24 “(ii) HOLDING AND DISTRIBUTION.—

1 “(I) HOLDING.—A designated
2 agent with unclaimed funds shall hold
3 the funds for a period of at least 3
4 years after the date on which the li-
5 censee paid the funds. The designated
6 agent shall make reasonably diligent
7 efforts to publicize the existence of the
8 unclaimed funds and the procedures
9 by which copyright owners may claim
10 such funds from the designated agent.

11 “(II) LICENSING ADMINISTRA-
12 TIVE COSTS.—At the end of the pe-
13 riod in which funds are held under
14 subclause (I), the designated agent
15 may apply the funds to offset licens-
16 ing administrative costs.

17 “(III) DISTRIBUTION OF RE-
18 MAINDER.—Any unclaimed funds not
19 applied to offset licensing administra-
20 tive costs under subclause (II) shall
21 be distributed as follows:

22 “(aa) The designated agent
23 shall pay to every other des-
24 ignated agent its pro rata share
25 of the unclaimed funds as deter-

1 mined on the basis of the propor-
2 tionate distribution of royalties
3 by each designated agent to copy-
4 right owners for the reporting pe-
5 riods during which the funds
6 were collected.

7 “(bb) Each designated agent
8 shall distribute, on an equitable
9 basis, its pro rata share of the
10 unclaimed funds to the copyright
11 owners that the designated agent
12 represents under this subsection
13 (other than those that cannot be
14 identified or located).

15 “(iii) PREEMPTION.—This subpara-
16 graph preempts any State law (including
17 common law) that would otherwise apply
18 concerning escheatment or abandoned or
19 unclaimed property.

20 “(C) DISPUTES.—Each designated agent
21 shall establish a committee that includes an
22 equal number of—

23 “(i) representatives of music pub-
24 lishing entities represented by the des-
25 ignated agent, and

1 “(ii) songwriters with musical works
2 represented by the designated agent who
3 are not members of the board of directors,
4 governing body, or management of the des-
5 ignated agent,
6 for the purpose of addressing any dispute raised
7 by a copyright owner relating to the allocation
8 and payment by the designated agent of royal-
9 ties to such copyright owner under a license ob-
10 tained from the designated agent under this
11 subsection. The dispute resolution process shall
12 not affect any other legal or equitable rights or
13 remedies available to any copyright owner or
14 the designated agent.

15 “(D) PROCEDURES.—The Register of
16 Copyrights shall establish by regulation the pro-
17 cedures for the holding by a designated agent
18 of unclaimed funds and royalties paid under
19 this subsection that are attributable to musical
20 works that are the subject of a legal dispute or
21 proceeding. A designated agent that complies
22 with the requirements of this paragraph and
23 such regulations shall not be subject to a legal
24 claim based upon or arising from unclaimed

1 funds or an ownership dispute or legal pro-
2 ceeding.

3 “(E) DOCUMENTATION.—A songwriter
4 whose musical works (or shares thereof) are ad-
5 ministered by a music publisher for licensing
6 under this subsection (including those rep-
7 resented through default representation pursu-
8 ant to paragraph (9)(E)(iv)) may request from
9 a designated agent a copy of the relevant por-
10 tions of any royalty statement that the des-
11 ignated agent provided, within the preceding 4
12 calendar years, to that publisher, and that
13 shows all data provided by the designated agent
14 to the publisher regarding the use and royalties
15 distributed to the publisher in connection with
16 those works (or shares thereof). A designated
17 agent shall provide the information requested
18 by the songwriter within a reasonable time after
19 receiving the request. A songwriter may make
20 such a request of a particular designated agent
21 not more than once each calendar year.

22 “(F) WITHHOLDING OF INTERIM ROYAL-
23 TIES.—Each designated agent may withhold
24 reasonable reserves from the distribution of in-
25 terim royalties collected under this subsection

1 to allow for the possibility of a lower final stat-
2 utory rate. Upon final determination of the
3 statutory rate, to the extent such reserves are
4 not required to be returned or credited to the
5 licensee, the designated agent shall distribute to
6 copyright owners such reserves with interest.

7 “(12) COST SHARING FEES.—

8 “(A) IN GENERAL.—The Copyright Roy-
9 alty Judges shall determine, under such proce-
10 dures as they may establish, an appropriate
11 cost-sharing mechanism and cost-sharing
12 amounts to be paid by licensees under this sub-
13 section to designated agents. Not later than
14 February 1, 2007, the Copyright Royalty
15 Judges shall initiate a proceeding to determine,
16 not later than May 1, 2007, appropriate interim
17 cost-sharing amounts to apply pending the es-
18 tablishment of final cost-sharing amounts. Any
19 cost-sharing mechanism or cost-sharing
20 amounts shall be equitably applied to all des-
21 ignated agents. In determining a cost-sharing
22 mechanism or cost-sharing amount under this
23 paragraph, the Copyright Royalty Judges shall
24 consider—

1 “(i)(I) the actual, reasonable costs of
2 creating and maintaining an infrastructure
3 for activities of designated agents under
4 this subsection;

5 “(II) any nonmonetary contributions
6 by the parties to such infrastructures, in-
7 cluding contributions of data and services;

8 “(III) the actual, reasonable costs to
9 designated agents specifically associated
10 with the administration of licenses under
11 this subsection;

12 “(IV) the nature and value of any col-
13 lateral benefits that any party may realize
14 from the blanket license and blanket li-
15 cense system created by this subsection;
16 and

17 “(V) any other factors deemed rel-
18 evant by the Copyright Royalty Judges.

19 “(B) COST-SHARING NOT A FACTOR IN
20 ROYALTY RATES.—The Copyright Royalty
21 Judges, in establishing royalty rates for statu-
22 tory licenses, may not take into account the
23 cost-sharing mechanism or cost-sharing
24 amounts under subparagraph (A).

25 “(13) EXCLUSION FROM BLANKET LICENSES.—

1 “(A) IN GENERAL.—A sound recording
2 company may, by written notice to the appro-
3 priate designated agent, exclude a musical work
4 from a compulsory license under paragraph (2)
5 if the musical work is the subject of a contract
6 described in subsection (c)(3)(E)(ii).

7 “(B) EXCLUSION ERRORS.—

8 “(i) NOT EXCLUDED.—In any case in
9 which a musical work could have been ex-
10 cluded pursuant to subparagraph (A) but
11 was not due to uncertainty concerning
12 ownership of the copyright of the musical
13 work or the application of a contract de-
14 scribed in subsection (c)(3)(E)(ii), or in
15 any case in which a digital music provider
16 makes payments to a designated agent for
17 use of a musical work excluded under sub-
18 paragraph (A), the designated agent shall
19 make payments to the appropriate person
20 as if the exclusion under subparagraph (A)
21 had applied on the date of the enactment
22 of the Section 115 Reform Act of 2006,
23 unless an agreement between the des-
24 ignated agent and the appropriate person
25 provides otherwise.

1 “(ii) EXCLUDED.—In any case in
2 which a musical work was excluded pursu-
3 ant to subparagraph (A) in error—

4 “(I) a sound recording company
5 acting in good faith with regards to
6 the exclusion shall only be liable for
7 the payment of amounts that other-
8 wise would have been payable under
9 this subsection plus interest as de-
10 scribed in (10)(A)(iii)(II); and

11 “(II) a licensee acting in good
12 faith with regards to the exclusion
13 shall not be liable.

14 “(14) DEFINITIONS.—In this subsection:

15 “(A) ADMINISTRATIVE FEES.—The term
16 ‘administrative fees’ means any fees that are
17 collected or deducted by a designated agent to
18 cover licensing administrative costs or other ad-
19 ministrative costs.

20 “(B) COPYRIGHT OWNER.—The term
21 ‘copyright owner’ means a natural person or le-
22 gally recognized entity that owns or controls an
23 interest in one or more copyrighted nondra-
24 matic musical works subject to licensing under
25 this section.

1 “(C) DIGITAL MUSIC PROVIDER.—The
2 term ‘digital music provider’ means a person
3 that—

4 “(i) with respect to a service engaging
5 in activities licensed under this sub-
6 section—

7 “(I) contracts with or has a di-
8 rect economic relationship with the
9 end users of the service, and controls
10 what end users pay for the service;

11 “(II) controls how content is
12 bundled and offered through the serv-
13 ice;

14 “(III) is able to fully report on
15 all revenues and consideration gen-
16 erated by the service; and

17 “(IV) is able to fully report on all
18 elements of music usage by the service
19 (or procure such reporting); or

20 “(ii) makes and distributes a hybrid
21 offering.

22 “(D) ERROR TOLERANCE STANDARD.—
23 The term ‘error tolerance standard’ means the
24 maximum percentage, of all data that a licensee
25 is required to report under this subsection

1 under its license in any statutory reporting pe-
2 riod, that is permitted to be inaccurate,
3 unreadable, or missing, or any combination
4 thereof, as determined under regulations issued
5 to carry out this subsection.

6 “(E) FULL DOWNLOAD.—The term ‘full
7 download’ means a digital phonorecord delivery
8 of a sound recording of a musical work that is
9 not limited in availability for listening by the
10 end user either to a period of time or a number
11 of times the sound recording can be played.

12 “(F) HYBRID OFFERING.—The term ‘hy-
13 brid offering’ means a reproduction or distribu-
14 tion of a phonorecord in physical form subject
15 to a compulsory license under this section
16 where—

17 “(i) a digital transmission of data by
18 or under the authority of the licensee is re-
19 quired to render the sound recording em-
20 bodied on the phonorecord audible to the
21 end user or to enable the continued ren-
22 dering of the sound recording after a finite
23 period of time or a specified number of
24 times rendered; or

1 “(ii) the phonorecord is made by or
2 under the authority of the licensee at the
3 request of a user for distribution to that
4 user or the user’s designee.

5 “(G) INTERACTIVE STREAM.—The term
6 ‘interactive stream’—

7 “(i) means a stream of a sound re-
8 cording of a musical work that does not
9 qualify for a statutory license under sec-
10 tion 114(d)(2) with respect to the sound
11 recording embodied therein; and

12 “(ii) subject to clause (i), includes a
13 stream of a particular sound recording of
14 a musical work that an end user has se-
15 lected, and is transmitted to such end user,
16 to listen to at or substantially at the time
17 of making such selection or at some future
18 time, whether or not as a part of a pro-
19 gram specially created for the end user.

20 “(H) LICENSING ADMINISTRATIVE
21 COSTS.—The term ‘licensing administrative
22 costs’ means the actual costs to a designated
23 agent that are attributable to the issuance and
24 administration of licenses under this subsection,
25 including—

1 “(i) costs in connection with the col-
2 lection and distribution of royalties under
3 this subsection;

4 “(ii) the costs of identifying and locat-
5 ing copyright owners and administering a
6 claims system for unidentified copyright
7 owners;

8 “(iii) the costs of royalty examinations
9 and other royalty compliance efforts; and

10 “(iv) the costs of creating and main-
11 taining an infrastructure for the activities
12 described in clauses (i), (ii), and (iii).

13 “(I) LIMITED DOWNLOAD.—the term ‘lim-
14 ited download’ means a digital phonorecord de-
15 livery of a sound recording of a musical work
16 that is only available for listening for—

17 “(i) a definite period of time (includ-
18 ing a period of time defined by ongoing
19 subscription payments made by an end
20 user); or

21 “(ii) a specified number of times.

22 “(J) NONINTERACTIVE STREAMING.—The
23 term ‘noninteractive streaming’ means the
24 radio-style streaming of sound recordings of
25 musical works for which a statutory license is

1 available with respect to the sound recordings
2 under section 114(d)(2).

3 “(K) OTHER ADMINISTRATIVE COSTS.—
4 The term ‘Other administrative costs’ means all
5 expenses, expenditures, retained earnings, and
6 reserves of a designated agent, other than li-
7 censing administrative costs, that are author-
8 ized by the board of directors of the designated
9 agent.

10 “(L) SONGWRITER.—The term ‘songwriter’
11 means the author of a musical work.

12 “(M) SOUND RECORDING COMPANY.—The
13 term ‘sound recording company’ means a per-
14 son who is—

15 “(i) a copyright owner or who has
16 similar rights to a sound recording of a
17 musical work under the common law or
18 statutes of any State with respect to a
19 sound recording fixed before February 15,
20 1972;

21 “(ii) an exclusive licensee of a sound
22 recording of a musical work; or

23 “(iii) performing the functions of mar-
24 keting and authorizing the distribution of
25 a sound recording of a musical work under

1 the authority of the copyright owner of the
2 musical work.

3 “(N) STREAM.—(i) The term ‘stream’
4 means the digital transmission of a sound re-
5 cording embodying a musical work for one-time
6 listening by the end user using technology such
7 that the transmission is not intended or de-
8 signed to result in a substantially complete re-
9 production of the sound recording, other than
10 an incidental reproduction made in the normal
11 course of such activity, including a cached, net-
12 work, or RAM buffer reproduction, to permit
13 such one-time listening.

14 “(ii) The term ‘streaming’ means the proc-
15 ess of making and distributing streams.

16 “(15) REGULATIONS.—The Register of Copy-
17 rights shall issue such regulations as are necessary
18 to carry out this subsection, including—

19 “(A) specifying the requirements and pro-
20 cedures for reporting and making payments,
21 and conducting royalty compliance examina-
22 tions, under paragraph (10);

23 “(B) specifying the procedures for exped-
24 ited proceedings under paragraph
25 (8)(D)(ii)(II)(bb);

1 “(C) specifying the form of a letter of di-
2 rection under paragraph (9)(I)(i); and

3 “(D) facilitating exclusions from the blan-
4 ket license under paragraph (13).”.

5 **SEC. 3. PERFORMANCE RIGHT PRESERVED.**

6 Section 115 of title 17, United States Code, is
7 amended by adding at the end the following new sub-
8 section:

9 “(f) PERFORMANCE RIGHT PRESERVED.—The rights
10 granted under subsection (e) shall not include, limit, or
11 otherwise affect any right of public performance of a musi-
12 cal work. The third sentence of subsection (e)(9)(E)(v)
13 and the definitions contained in paragraph (14) of sub-
14 section (e) shall not be taken into account in any adminis-
15 trative, judicial, or other governmental proceeding to set
16 or adjust the royalties payable to copyright owners of mu-
17 sical works for, the right of public performance of their
18 works.”.

19 **SEC. 4. INTERIM RATE PROCESS.**

20 Section 115(c) of title 17, United States Code, is
21 amended by adding at the end the following new para-
22 graph:

23 “(7) INTERIM RATES.—

24 “(A) IN GENERAL.—For any activity for
25 which a license is available under this section,

1 other than an activity for which a license is
2 available under subsection (e), for which a rate
3 and terms have not been determined, any per-
4 son shall, upon serving notice to the copyright
5 owner, have a license under this subsection to
6 engage in the activity, subject to subparagraph
7 (B).

8 “(B) INTERIM RATES.—Upon the filing of
9 an application under subparagraph (A)—

10 “(i) the parties may negotiate an in-
11 terim rate and terms that will apply to the
12 activity under the license; or

13 “(ii) either party or both parties may
14 apply to the Copyright Royalty Judges for
15 an interim rate and terms, in which case—

16 “(I) the Copyright Royalty
17 Judges shall, not later than 15 days
18 after the application is made, publish
19 notice of an expedited proceeding to
20 determine the interim rate and terms;
21 and

22 “(II) the Judges shall determine
23 the interim rate and terms not less
24 than 30 days and not more than 60

1 days after publishing the notice,
2 through the expedited proceeding.

3 “(C) APPLICABILITY OF INTERIM
4 RATES.—(i) Interim rates and terms negotiated
5 under subparagraph (B)(i) or established under
6 subparagraph (B)(ii) shall apply to the activity
7 under the license concerned until a rate and
8 terms for the activity are determined under
9 paragraph (3)(C) and chapter 8, or as other-
10 wise agreed by the parties.

11 “(ii) Interim rates and terms described in
12 subparagraph (A) with respect to an activity by
13 an applicant shall not be treated as precedent
14 in a final ratemaking proceeding. If the Copy-
15 right Royalty Judges have established an in-
16 terim rate and terms under subparagraph
17 (B)(ii), subject to subparagraph (D), that rate
18 and those terms shall apply to the same activity
19 engaged in by any person, except as otherwise
20 agreed to by the parties.

21 “(D) SINGLE PROCEEDING FOR EACH AC-
22 TIVITY.—Unless the Copyright Royalty Judges
23 determine that there is good cause to review an
24 interim rate or terms established under sub-
25 paragraph (B)(ii), the Copyright Royalty

1 Judges may conduct only 1 proceeding to deter-
2 mine an interim rate and terms for an activity
3 for which a license is available under this sub-
4 section.

5 “(E) ADJUSTMENT OF INTERIM RATES.—

6 After a final determination of rates and terms
7 that will apply to an activity for which a license
8 is available under this subsection has been
9 made under paragraph (3)(C) and chapter 8,
10 the final rate and terms shall be retroactive to
11 the inception of the activity under a license be-
12 tween a person and a copyright owner to which
13 the rate and terms apply, unless an agreement
14 between the parties to the license provides oth-
15 erwise. Not later than 60 days after the deter-
16 mination of the final rate and terms becomes
17 effective—

18 “(i) the person shall pay to the copy-
19 right owner any amounts due from under-
20 payment of fees by the person because the
21 final rate exceeds the interim rate; or

22 “(ii) the copyright owner shall refund
23 to the person the amounts of any overpay-
24 ment of fees by the person because the in-
25 terim rate exceed the final rate, or, at the

1 election of the person, the copyright owner
 2 shall credit such overpayment against fu-
 3 ture payments by the person to the copy-
 4 right owner under this subsection.”.

5 **SEC. 5. TECHNICAL AMENDMENTS.**

6 (a) DEFINITION.—Section 115(d) of title 17, United
 7 States Code, is amended—

8 (1) in the first sentence, by striking “As used”
 9 and inserting by adding at the end the following: “.”

10 “(1) IN GENERAL.—As used”;

11 (2) by moving the remaining text 2 ems to the
 12 right; and

13 (3) by adding at the end the following:

14 “(2) INCLUDED ACTIVITIES.—The term ‘digital
 15 phonorecord delivery’ includes—

16 “(A) an interactive stream (as such term is
 17 defined in subsection (e)(16)(F)) of nondra-
 18 matic musical works; and

19 “(B) server and incidental reproductions of
 20 nondramatic musical works made to facilitate
 21 the deliveries of phonorecords by digital trans-
 22 mission described in subparagraph (A) and
 23 paragraph (1).”.

24 (b) CONFORMING AMENDMENTS.—Section 115(c) of
 25 title 17, United States Code, is amended—

1 (1) in paragraph (3)—

2 (A) in the first sentence of subparagraph
3 (A), by striking “or authorize the distribution
4 of”;

5 (B) in subparagraph (C), by striking
6 “Such terms and rates shall distinguish” and
7 all that follows through the end of the sentence;
8 and

9 (C) in subparagraph (D), by striking
10 “Such terms and rates shall distinguish” and
11 all that follows through the end of the sentence;
12 and

13 (2) in paragraph (5)—

14 (A) by striking “(5) Royalty payments”
15 and inserting “(5)(A) Subject to subparagraph
16 (B), royalty payments”; and

17 (B) by adding at the end the following:

18 “(B) Payments under the license provided for
19 under subsection (e) shall be governed by that sub-
20 section in lieu of subparagraph (A).”.

21 **SEC. 6. EFFECTIVE DATE.**

22 (a) IN GENERAL.—Subject to subsection (b), this Act
23 and the amendments made by this Act take effect on the
24 date of the enactment of this Act.

1 (b) DELAY OF LICENSES.—No license under sub-
2 section (e) of section 115 of title 17, United States Code,
3 may take effect before January 1, 2008.

4 **SEC. 7. SAVINGS CLAUSES.**

5 (a) LICENSE NOT REQUIRED.—This Act and the
6 amendments made by this Act shall not be construed to
7 indicate whether an activity for which a license under sec-
8 tion 115 of title 17, United States Code, is available, if
9 not licensed or otherwise authorized by the copyright
10 owner, would constitute an act of copyright infringement.

11 (b) FAIR USE.—Nothing in this Act shall affect any
12 right, limitation, or defense to copyright infringement, in-
13 cluding fair use, under title 17, United States Code.

○